

House File 417 - Introduced

HOUSE FILE 417

BY HAGENOW

A BILL FOR

1 An Act relating to increasing certain criminal and
2 administrative penalties for operating-while-intoxicated
3 offenses.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 321J.2, subsection 2, paragraph c, Code
2 2011, is amended to read as follows:

3 c. A class ~~"D"~~ "C" felony for a third offense and each
4 subsequent offense.

5 Sec. 2. Section 321J.2, subsection 3, unnumbered paragraph
6 1, Code 2011, is amended to read as follows:

7 A Except as otherwise provided in section 321J.2C, a first
8 offense is punishable by all of the following:

9 Sec. 3. Section 321J.2, subsections 4, 5, and 10, Code 2011,
10 are amended to read as follows:

11 4. A Except as otherwise provided in section 321J.2C, a
12 second offense is punishable by all of the following:

13 a. A minimum period of imprisonment in the county jail or
14 community-based correctional facility of ~~seven~~ fourteen days
15 but not to exceed two years.

16 b. Assessment of a minimum fine of ~~one two thousand eight~~
17 five hundred ~~fifty~~ dollars and a maximum fine of ~~six~~ seven
18 thousand ~~two five~~ hundred ~~fifty~~ dollars. Surcharges and fees
19 shall be assessed pursuant to chapter 911.

20 c. Revocation of the defendant's driver's license for a
21 period of ~~one year~~ three years, if a revocation occurs pursuant
22 to section 321J.12, subsection 1. If a revocation occurs due
23 to test refusal under section 321J.9, or pursuant to section
24 321J.4, subsection 2, the defendant's license shall be revoked
25 for a period of ~~two~~ four years.

26 d. Assignment to substance abuse evaluation and treatment, a
27 course for drinking drivers, and, if available and appropriate,
28 a reality education substance abuse prevention program pursuant
29 to section 321J.24.

30 5. A Except as otherwise provided in section 321J.2C, a
31 third offense is punishable by all of the following:

32 a. Commitment to the custody of the director of the
33 department of corrections for an indeterminate term not to
34 exceed ~~five ten~~ ten years, with a mandatory minimum term of ~~thirty~~
35 sixty days.

1 (1) If the court does not suspend a person's sentence of
2 commitment to the custody of the director of the department
3 of corrections under this paragraph "a", the person shall be
4 assigned to a facility pursuant to section 904.513.

5 (2) If the court suspends a person's sentence of commitment
6 to the custody of the director of the department of corrections
7 under this paragraph "a", the court shall order the person to
8 serve not less than ~~thirty~~ sixty days nor more than one year in
9 the county jail, and the person may be committed to treatment
10 in the community under section 907.6.

11 b. Assessment of a minimum fine of ~~three~~ five thousand ~~one~~
12 ~~hundred twenty-five~~ dollars and a maximum fine of ~~nine~~ ten
13 thousand ~~three hundred seventy-five~~ dollars. Surcharges and
14 fees shall be assessed pursuant to chapter 911.

15 c. Revocation Permanent revocation of the person's driver's
16 license ~~for a period of six years pursuant to section 321J.4,~~
17 ~~subsection 4.~~

18 d. Assignment to substance abuse evaluation and treatment, a
19 course for drinking drivers, and, if available and appropriate,
20 a reality education substance abuse program pursuant to section
21 321J.24.

22 10. The clerk of the district court shall immediately
23 certify to the department a true copy of each order entered
24 with respect to deferral of judgment, deferral of sentence, or
25 pronouncement of judgment and sentence for a defendant under
26 this section or section 321J.2C.

27 Sec. 4. NEW SECTION. 321J.2C **Enhanced penalties — alcohol**
28 **concentration exceeding .15.**

29 1. A person who violates section 321J.2, subsection 1, whose
30 alcohol concentration established by the results of an analysis
31 of a specimen of the person's blood, breath, or urine withdrawn
32 in accordance with this chapter exceeds .15, regardless of
33 whether or not the alcohol concentration indicated by the
34 chemical test minus the established margin of error inherent in
35 the device or method used to conduct the test equals an alcohol

1 concentration of .15 or more, shall be subject to the following
2 penalties:

3 a. For a first offense:

4 (1) A minimum period of imprisonment in the county jail
5 of four days, but not to exceed one year, to be served as
6 ordered by the court, less credit for any time the person
7 was confined in a jail or detention facility following
8 arrest or for any time the person spent in a court-ordered
9 operating-while-intoxicated program that provides law
10 enforcement security. However, the court, in ordering service
11 of the sentence and in its discretion, may accommodate the
12 defendant's work schedule.

13 (2) Assessment of a fine of at least one thousand five
14 hundred dollars and a maximum of two thousand two hundred fifty
15 dollars. Surcharges and fees shall also be assessed pursuant
16 to chapter 911.

17 (3) Revocation of the person's driver's license for a
18 minimum period of two hundred forty days up to a maximum
19 revocation period of one year.

20 (4) Assignment to substance abuse evaluation and treatment,
21 a course for drinking drivers, and, if available and
22 appropriate, a reality education substance abuse prevention
23 program pursuant to section 321J.24.

24 b. For a second offense, regardless of whether the person
25 received an enhanced penalty under this section for the first
26 offense:

27 (1) A minimum period of imprisonment in the county jail or
28 community-based correctional facility of thirty days but not to
29 exceed two years.

30 (2) Assessment of a minimum fine of three thousand dollars
31 and a maximum fine of eight thousand dollars. Surcharges and
32 fees shall be assessed pursuant to chapter 911.

33 (3) Revocation of the defendant's driver's license for a
34 period of four years.

35 (4) Seizure and forfeiture of the defendant's motor vehicle

1 to the state pursuant to chapters 809 and 809A if the defendant
2 is the owner of the motor vehicle used in the commission of the
3 offense.

4 (5) Assignment to substance abuse evaluation and treatment,
5 a course for drinking drivers, and, if available and
6 appropriate, a reality education substance abuse prevention
7 program pursuant to section 321J.24.

8 c. For a third offense and all subsequent offenses under
9 this section, regardless of whether the person received an
10 enhanced penalty under this section for any prior offenses:

11 (1) A minimum period of imprisonment of ninety days but not
12 to exceed ten years.

13 (2) Assessment of a minimum fine of five thousand dollars
14 and a maximum fine of ten thousand dollars. Surcharges and
15 fees shall be assessed pursuant to chapter 911.

16 (3) Permanent revocation of the person's driver's license.

17 (4) Seizure and forfeiture of the defendant's motor vehicle
18 to the state pursuant to chapters 809 and 809A if the defendant
19 is the owner of the motor vehicle used in the commission of the
20 offense.

21 (5) Assignment to substance abuse evaluation and
22 treatment, a course for drinking drivers, and, if available
23 and appropriate, a reality education substance abuse program
24 pursuant to section 321J.24.

25 2. The provisions of this chapter that do not conflict with
26 the provisions of this section shall continue to apply to a
27 violation of this chapter.

28 Sec. 5. Section 321J.4, subsection 2, Code 2011, is amended
29 to read as follows:

30 2. If a defendant is convicted of a violation of section
31 321J.2, and the defendant's driver's license or nonresident
32 operating privilege has not already been revoked under section
33 321J.9 or 321J.12 for the occurrence from which the arrest
34 arose, the department shall revoke the defendant's driver's
35 license or nonresident operating privilege for ~~one year~~ three

1 years if the defendant submitted to chemical testing and has
2 had a previous conviction or revocation under this chapter and
3 shall revoke the defendant's driver's license or nonresident
4 operating privilege for ~~two~~ four years if the defendant refused
5 to submit to chemical testing and has had a previous revocation
6 under this chapter. The defendant shall not be eligible for
7 any temporary restricted license for forty-five days after the
8 effective date of revocation if the defendant submitted to
9 chemical testing and shall not be eligible for any temporary
10 restricted license for ninety days after the effective date
11 of revocation if the defendant refused chemical testing. The
12 temporary restricted license shall be issued in accordance with
13 section 321J.20, subsection 2. The department shall require
14 the defendant to install an ignition interlock device of a type
15 approved by the commissioner of public safety on all vehicles
16 owned or operated by the defendant if the defendant seeks a
17 temporary restricted license at the end of the minimum period
18 of ineligibility. A temporary restricted license shall not
19 be granted by the department until the defendant installs the
20 ignition interlock device.

21 Sec. 6. Section 321J.4B, subsection 6, Code 2011, is amended
22 to read as follows:

23 6. Upon conviction of the defendant for a second
24 or subsequent violation of subsection 2, paragraph "a",
25 ~~subparagraph (2)~~, the court shall order, if the convicted
26 person is the owner of the motor vehicle used in the commission
27 of the offense, that that motor vehicle be seized and forfeited
28 to the state pursuant to chapters 809 and 809A.

29 Sec. 7. Section 321J.9, subsection 1, Code 2011, is amended
30 to read as follows:

31 1. If a person refuses to submit to the chemical testing, a
32 test shall not be given, but the department, upon the receipt
33 of the peace officer's certification, subject to penalty for
34 perjury, that the officer had reasonable grounds to believe the
35 person to have been operating a motor vehicle in violation of

1 section 321J.2 or 321J.2A, that specified conditions existed
2 for chemical testing pursuant to section 321J.6, and that the
3 person refused to submit to the chemical testing, shall revoke
4 the person's driver's license and any nonresident operating
5 privilege for the following periods of time:

6 a. One year if the person has no previous revocation under
7 this chapter; ~~and.~~

8 b. ~~Two~~ Four years if the person has had a one previous
9 revocation under this chapter.

10 Sec. 8. Section 321J.9, subsection 1, Code 2011, is amended
11 by adding the following new paragraph:

12 NEW PARAGRAPH. c. Revocation shall be permanent if the
13 person has had more than one previous revocation under this
14 chapter.

15 Sec. 9. Section 321J.12, subsection 1, paragraph b, Code
16 2011, is amended to read as follows:

17 b. ~~One-year~~ Three years if the person has had a one previous
18 revocation under this chapter.

19 Sec. 10. Section 321J.12, subsection 1, Code 2011, is
20 amended by adding the following new paragraph:

21 NEW PARAGRAPH. c. Revocation shall be permanent if the
22 person has had more than one previous revocation under this
23 chapter.

24 Sec. 11. Section 321J.12, subsection 2, paragraph d, Code
25 2011, is amended to read as follows:

26 d. A person whose license or privileges have been revoked
27 under subsection 1, paragraph "b", for ~~one-year~~ three years
28 shall not be eligible for any temporary restricted license for
29 forty-five days after the effective date of the revocation, and
30 the department shall require the person to install an ignition
31 interlock device of a type approved by the commissioner
32 of public safety on all vehicles owned or operated by the
33 defendant if the defendant seeks a temporary restricted license
34 at the end of the minimum period of ineligibility. The
35 temporary restricted license shall be issued in accordance with

1 section 321J.20, subsection 2. A temporary restricted license
2 shall not be granted by the department until the defendant
3 installs the ignition interlock device.

4 Sec. 12. Section 321J.20, subsection 1, paragraph b, Code
5 2011, is amended to read as follows:

6 b. A temporary restricted license may be issued under this
7 subsection if the person's noncommercial driver's license is
8 revoked for ~~two~~ three years under section 321J.4, subsection 2,
9 or section 321J.9, subsection 1, paragraph "b", and the first
10 three hundred sixty-five days of the revocation have expired.

11

EXPLANATION

12 This bill increases certain criminal and administrative
13 penalties for operating-while-intoxicated (OWI) offenses under
14 Code chapter 321J.

15 Under current law, a person commits the offense of operating
16 while intoxicated if the person operates a motor vehicle in
17 this state while under the influence of an alcoholic beverage
18 or other drug or a combination of such substances, while having
19 an alcohol concentration of .08 or more, or while any amount of
20 a controlled substance is present in the person, as measured
21 in the person's blood or urine. Current law provides both
22 administrative and criminal penalties for persons found to
23 be in violation of Code chapter 321J based upon whether the
24 offense is a first, second, or third violation of the law.

25 The bill increases certain criminal and administrative
26 penalties for persons convicted of OWI offenses for second and
27 subsequent offenses but distinguishes OWI offenses involving
28 a person with a blood alcohol concentration between .08 and
29 .15 and OWI offenses involving a person with a blood alcohol
30 concentration in excess of .15 and provides enhanced penalties
31 for the latter.

32 The bill maintains current law that provides a person
33 convicted of a second offense OWI is guilty of an aggravated
34 misdemeanor, but increases the mandatory minimum jail time from
35 seven days to 14 days, increases the range of the fine that

1 may be imposed from \$1,850 to \$6,250 to \$2,500 to \$7,500, and
2 increases the period of license revocation from one to three
3 years if the person submitted to a chemical test and failed
4 that test and from two years to four years if a revocation
5 occurs due to test refusal under Code section 321J.9.

6 The bill increases the criminal penalty for a person
7 convicted of a third offense OWI from a class "D" felony to
8 a class "C" felony and provides that the mandatory term of
9 imprisonment shall be at least 60 days but shall not exceed
10 10 years. The fine imposed shall be from \$5,000 to \$10,000
11 and a person convicted of a third offense OWI is subject to a
12 permanent license revocation and mandatory vehicle seizure and
13 forfeiture pursuant to Code chapters 809 and 809A.

14 The bill provides for an enhanced penalty structure for
15 a person convicted of an OWI offense with a blood alcohol
16 concentration between .08 and .15. For a first offense, the
17 person is subject to a minimum period of imprisonment in the
18 county jail of four days, but not to exceed one year, a fine
19 of between \$1,500 and \$2,250, and revocation of the person's
20 driver's license for a minimum period of 240 days up to a
21 maximum revocation period of one year; for a second offense, a
22 person is subject to a minimum period of imprisonment in the
23 county jail or community-based correctional facility of from
24 30 days up to two years, a fine of between \$3,000 and \$8,000,
25 revocation of the defendant's driver's license for four years,
26 and seizure and forfeiture of the person's motor vehicle to the
27 state pursuant to Code chapters 809 and 809A if the person is
28 the owner of the motor vehicle used in the commission of the
29 offense; and for a third offense and all subsequent offenses, a
30 person is subject to minimum period of imprisonment of 90 days
31 not to exceed 10 years, a fine of between \$5,000 and \$10,000,
32 permanent revocation of the person's driver's license, and
33 seizure and forfeiture of the person's motor vehicle to the
34 state pursuant to Code chapters 809 and 809A if the person
35 is the owner of the motor vehicle used in the commission of

1 the offense. In addition, consistent with current law, all
2 offenders under this enhanced penalty structure shall be
3 assigned to substance abuse evaluation and treatment, a course
4 for drinking drivers, and, if available and appropriate, a
5 reality education substance abuse program pursuant to Code
6 section 321J.24.